

AMENDED IN SENATE MAY 20, 2014

AMENDED IN SENATE MAY 14, 2014

AMENDED IN SENATE APRIL 23, 2014

SENATE BILL

No. 1193

Introduced by Senator Evans

February 20, 2014

An act to amend Sections 11473.5 and 11479 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 1193, as amended, Evans. Controlled substances: destruction of seized marijuana: cause of action.

(1) Existing law, the Uniform Controlled Substances Act, includes provisions authorizing the forfeiture and seizure of property involved in, or purchased with the proceeds from, a controlled substance offense. Existing law authorizes the destruction of seized substances suspected to be controlled substances in excess of 10 pounds in gross weight, subject to specified requirements.

Existing law requires that, prior to destruction of a suspected controlled substance, the law enforcement agency take at least 5 random and representative samples, for evidentiary purposes, from the total amount of suspected controlled substances to be destroyed in addition to the 10 pounds the law enforcement agency is required to retain.

Existing law requires, when the suspected controlled substance consists of growing or harvested marijuana plants, at least one 10-pound sample (which may include stalks, branches, or leaves) and 5 representative samples consisting of leaves or buds to be retained for

evidentiary purposes from the total amount of suspected controlled substances to be destroyed by the law enforcement agency.

This bill would instead require that, prior to the destruction of growing or harvested marijuana plants, the law enforcement agency take at least one 2-pound sample and 5 random and representative samples, and would authorize the agency to destroy the remainder. The bill would require that counsel for the defendant have an opportunity to examine the 2-pound sample and 5 representative samples for 30 days from the date the growing or harvested marijuana was seized if there are criminal proceedings pending ~~which~~ *that* pertain to the seized marijuana to be destroyed. By imposing additional duties on local law enforcement entities, this bill would impose a state-mandated local program.

(2) Existing law requires all seizures of controlled substances, instruments, or paraphernalia used for unlawfully using or administering a controlled substance that are in the possession of a city, county, or state official as a result of a case in which no trial was had or which has been disposed of by way of dismissal or otherwise than by way of conviction be destroyed by order of the court unless the court finds that the controlled substances, instruments, or paraphernalia were lawfully possessed by the defendant.

This bill would require that any marijuana, instrument, or paraphernalia seized that was lawfully possessed by a defendant be returned to the defendant *upon the order of the court* if the case is dismissed or the defendant is acquitted based on a defense or protection provided in the Compassionate Use Act of 1996 or the Medical Marijuana Program, as provided. If the marijuana, instrument, or paraphernalia *that was lawfully possessed by the defendant* was damaged or destroyed, the bill would entitle the defendant to receive reasonable compensation for the damage or loss.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 11473.5 of the Health and Safety Code is amended to read:

11473.5. (a) All seizures of controlled substances, instruments, or paraphernalia used for unlawfully using or administering a controlled substance that are in possession of a city, county, or state official as found property, or as the result of a case in which no trial was had or which has been disposed of by way of dismissal or otherwise than by way of conviction, shall be destroyed by order of the court, unless the court finds that the controlled substances, instruments, or paraphernalia were lawfully possessed by the defendant.

(b) In a criminal prosecution in which the defendant was acquitted or the case dismissed based on a defense or protection provided under Section 11362.5 or Article 2.5 (commencing with Section 11362.7) of Chapter 6, *upon the order of the court*, the following shall apply:

(1) Any marijuana, instrument, or paraphernalia seized in the case that was lawfully possessed by the defendant shall be returned to him or her.

(2) If any marijuana, instrument, or paraphernalia *seized in the case that was lawfully possessed by the defendant* was damaged or destroyed, the defendant shall receive reasonable compensation for the damage or loss.

(3) A claim pursuant to this subdivision shall be presented not later than six months after acquittal or dismissal in the case.

(c) If the court finds that the property was not lawfully possessed by the defendant, law enforcement may request of the court that certain uncontaminated instruments or paraphernalia be relinquished to a school or school district for science classroom education in lieu of destruction.

SEC. 2. Section 11479 of the Health and Safety Code is amended to read:

11479. Notwithstanding Section 11473 and subdivisions (a) and (c) of Section 11473.5, at any time after seizure by a law enforcement agency of a suspected controlled substance, that amount in excess of 10 pounds in gross weight, and in the case of growing or harvested marijuana, only that amount in excess of two pounds, may be destroyed without a court order by the chief of

1 the law enforcement agency or a designated subordinate.
2 Destruction shall not take place pursuant to this section until all
3 of the following requirements are satisfied:

4 (a) At least five random and representative samples have been
5 taken, for evidentiary purposes, from the total amount of suspected
6 controlled substances to be destroyed. These samples shall be in
7 addition to the 10 pounds required above. When the suspected
8 controlled substance consists of growing or harvested marijuana
9 plants, at least one two-pound sample (which may include stalks,
10 branches, or leaves) and five representative samples consisting of
11 leaves or buds shall be retained for evidentiary purposes from the
12 total amount of suspected controlled substances to be destroyed
13 and counsel for the defendant shall have 30 days from the date the
14 growing or harvested marijuana was seized to examine the
15 two-pound sample and five representative samples if there are
16 criminal proceedings pending ~~which~~ *that* pertain to the seized
17 growing or harvested marijuana to be destroyed.

18 (b) Photographs have been taken ~~which~~ *that* reasonably
19 demonstrate the total amount of the suspected controlled substance
20 to be destroyed.

21 (c) The gross weight of the suspected controlled substance has
22 been determined, either by actually weighing the suspected
23 controlled substance or by estimating that weight after dimensional
24 measurement of the total suspected controlled substance.

25 (d) The chief of the law enforcement agency has determined
26 that it is not reasonably possible to preserve the suspected
27 controlled substance in place, or to remove the suspected controlled
28 substance to another location. In making this determination, the
29 difficulty of transporting and storing the suspected controlled
30 substance to another site and the storage facilities may be taken
31 into consideration.

32 Subsequent to any destruction of a suspected controlled substance
33 pursuant to this section, an affidavit shall be filed within 30 days
34 in the court ~~which~~ *that* has jurisdiction over any pending criminal
35 proceedings pertaining to that suspected controlled substance,
36 reciting the applicable information required by subdivisions (a),
37 (b), (c), and (d) together with information establishing the location
38 of the suspected controlled substance, and specifying the date and
39 time of the destruction. In the event that there are no criminal
40 proceedings pending ~~which~~ *that* pertain to that suspected controlled

1 substance, the affidavit may be filed in any court within the county
2 ~~which~~ *that* would have jurisdiction over a person against whom
3 those criminal charges might be filed.

4 SEC. 3. If the Commission on State Mandates determines that
5 this act contains costs mandated by the state, reimbursement to
6 local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

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